

Notice of Extension of Time to Comment  
on Proposed Amendments to Rules

The United States Court of Federal Claims has acted to extend the time for submitting comments on the proposed amendments to its rules announced March 3, 2006. With the extension, the time by which comments should be filed is now June 2, 2006. Comments previously were due by April 17, 2006.

As stated in the Notice of Proposed Amendment to Rules issued on March 3, 2006, comments should be addressed to

Clerk of Court  
United States Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20005

Comments should be submitted by means that actually reach the Clerk on June 2, 2006.

  
Clerk of the Court

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## **Rule 6. Time**

\* \* \* \* \*

**(e) Additional Time After Certain Kinds of Service ~~Under RCFC 5(b)(2)(B), (C), or (D).~~**  
Whenever a party ~~has the right or is required to do some act or take some proceedings~~ must or may act within a prescribed period after ~~the service of a notice or other paper upon the party, and the notice or paper is served upon the party~~ service and service is made under RCFC 5(b)(2)(B), (C), or (D), 3 days ~~shall be~~ are added ~~to~~ after the prescribed period would otherwise expire under subdivision (a).

(As revised and reissued May 1, 2002; as amended May 15, 2006.)

### **Rules Committee Notes**

\* \* \* \* \*

#### **2006 Amendment**

Subdivision (e) has been amended to reflect the corresponding changes to FRCP 6(e) that became effective December 1, 2005.

**Rule 7.2 Time for Filing**

\* \* \* \* \*

**(c) Motions Under RCFC 12(b), 12(c), 52.1 and ~~56 and 56.1~~.** Responses to these motions shall be filed within 28 days after service of the motion and replies thereto within 14 days after service of the response.

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended September 15, 2003, May 15, 2006.)

**Rules Committee Notes**

\* \* \* \* \*

**2006 Amendment**

A cross-reference in subdivision (c) was revised to accord with the addition of RCFC 52.1.

## **Rule 52.1 Administrative Records**

**(a) Filing the Administrative Record.** In all cases in which action by, and a record of proceedings before, an agency is relevant to a decision, the administrative record of such proceedings shall be certified by the agency or agencies and filed with the court. The court may by order, including a scheduling order entered pursuant to RCFC 16(b) and Appendix A or C, establish a time for filing the administrative record.

**(b) Motions Respecting the Administrative Record.** The parties may move for partial or other judgment on the administrative record filed with the court. Absent an order by the court setting a different procedure, in any such motion or supporting memorandum, the moving or cross-moving party shall include a Statement of Facts that draws upon and cites to the portions of the administrative record that bear on the issues presented to the court. The opposing party shall include in any response a Counter-Statement of Facts that similarly draws upon and cites to the administrative record.

(Added May 15, 2006.)

### **Rules Committee Note**

#### **2006 Adoption**

RCFC 52.1 has no FRCP counterpart. The rule replaces an earlier rule, RCFC 56.1, that applied certain standards borrowed from the procedure for summary judgment to review of an agency decision on the basis of an administrative record. That incorporation proved to be confusing in practice because only a portion of the summary judgment standards were borrowed. Summary judgment standards are not pertinent to judicial review upon an administrative record. See *Bannum, Inc. v. United States*, 404 F.3d 1346, 1355–57 (Fed. Cir. 2005). Specifically, the now-repealed Rule 56.1 did *not* adopt the overall standard that summary judgment might be appropriate where there were no genuine issues of material fact. See RCFC 56(c). Nonetheless, despite this omission, parties, in moving for judgment on the administrative record under the prior rule, frequently would contest whether the administrative record showed the existence of a genuine dispute of material fact. To avoid this

confusion, the new rule omits any reference to summary judgment or to the standards applicable to summary judgment.

Cases filed in this court frequently turn only in part on action taken by an administrative agency. In such cases, the administrative record may provide a factual and procedural predicate for a portion of the court’s decision, while other elements might be derived from a trial, an evidentiary hearing, or summary judgment or other judicial proceedings. This rule applies whether the court’s decision is derived in whole or in part from the agency action reflected in the administrative record.

The standards and criteria governing the court’s review of agency decisions vary depending upon the specific law to be applied in particular cases. The rule does not address those standards or criteria. Correspondingly, any motion for correction or supplementation of the administrative record should be made on the basis of either the specific law to be applied in the particular case or generally applicable principles of administrative law.

**Rule 52.2 Remand; Extension or Termination of Stay of Proceedings on Remand; Disposition of Case**

**(a) Remand.**

**(1) Issuance of Remand Order.** At the request of a party or on its own motion, the court may in any case within its jurisdiction by order remand appropriate matters to any administrative or executive body or official with such direction as may be deemed proper and just.

**(2) Content of Remand Order.** An order of remand shall (A) delineate the area of further consideration or action deemed warranted on the remand, (B) fix the duration of the remand period, not to exceed 6 months, and (C) specify the extent to which court proceedings shall be stayed during the remand period.

**(3) Service of Order.** A certified copy of any order issued pursuant to this rule shall be served by the clerk on the administrative or executive body or official to whom the order is directed. A copy of the order shall be served on each party in conformity with RCFC 5.

**(4) Transmittal of Administrative Record.** Following service of the order as provided for in this rule, the clerk shall transmit the administrative record, if any, to the Department of Justice for return to the administrative or executive body or official to whom the order of remand is directed.

**(5) Advice of Administrative Action.** In every case in which an order of remand is entered pursuant to this rule, the attorney of record for the party so designated in the order of remand shall report to the court the status of proceedings on remand at intervals of 90 days or less, beginning with the date of the order.

**(b) Extension or Termination of Stay of Proceedings on Remand; Disposition of Case.**

**(1) Extension.** If the administrative or executive body or official has not, during the period of stay provided for in an order of remand pursuant to subdivision (a), rendered a decision on the matter remanded, the party to whom opportunity was afforded to obtain further administrative consideration shall, by

motion pursuant to RCFC 6, request an extension of the stay of proceedings, or, by motion pursuant to RCFC 7, request the initiation of proceedings toward otherwise disposing of the case.

**(2) Disposition at Administrative Level.** If, during the period of the stay of proceedings as provided for in a remand order, the parties dispose of the case at the administrative level, the plaintiff shall file a motion to dismiss the case with prejudice.

**(3) Decision on Remand.** Upon completion of proceedings pursuant to an order of remand under subdivision (a), the administrative or executive body or official to whom the order was directed shall forward to the clerk for filing 4 copies of the decision or final action on remand. A copy of such decision or action shall be served on each party by the clerk.

**(4) Action by the Parties.** Within 30 days after the filing of a decision or final action pursuant to subdivision (3), each party shall file with the clerk a notice indicating whether or not the decision or final action on remand affords a satisfactory basis for disposition of the claim at the administrative level, or whether further proceedings before the court are deemed required, and, if such proceedings are desired, what those proceedings should be. A copy of such notice shall be served on each adverse party in conformity with RCFC 5. Thereafter, the court will enter an order prescribing the procedure to be followed, either specially or pursuant to the rules of the court, or take such other action as may be deemed appropriate.

(As revised and reissued May 1, 2002; as renumbered May 15, 2006.)

**Rules Committee Note**

**2002 Revision and 2006 Amendment**

RCFC 52.2 has no FRCP counterpart. The rule formerly appeared in these rules as RCFC 60.1 and, following the court's May 1, 2002, revision of its rules, as RCFC 56.2. The first renumbering of the rule (from RCFC 60.1 to RCFC 56.2) was intended to reflect a more logical placement in the

organizational structure of the court's rules; the second renumbering (from RCFC 56.2 to RCFC 52.2) was attributable to a further change in the organizational structure of the court's rules as reflected in the abrogation of related RCFC 56.1 and its replacement by new RCFC 52.1.

## **Rule 56. Summary Judgment**

\* \* \* \* \*

**(h) Procedures.** The following procedures shall be followed with respect to motions for summary judgment ~~other than in actions seeking review of a decision on the basis of an administrative record:~~

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended May 15, 2006.)

### **Rules Committee Notes**

\* \* \* \* \*

#### **2006 Amendment**

A clause was deleted from the opening portion of subdivision (h) to accord with the abrogation of RCFC 56.1.



**Rule 56.1 Review of Decision on the Basis of  
Administrative Record** [Abrogated, effective  
May 15, 2006.]

**Rules Committee Notes**

\* \* \* \* \*

**2006 Abrogation**

RCFC 56.1 has been abrogated for the reasons  
described in the Rules Committee Note to  
RCFC 52.1.

**Rule 56.2 Remand; Extension or Termination  
of Stay of Proceedings on Remand; Disposition  
of Case** [Renumbered as RCFC 52.2, effective  
May 15, 2006.]

## **Rule 83.1 Attorneys**

\* \* \* \* \*

### **(b) Admission to Practice.**

\* \* \* \* \*

#### **(2) Upon Oral Motion.**

**(A) In Washington, DC.** An oral motion for admission may be made by a member of the bar of this court before any judge of this court, and the judge or the clerk shall administer the oath. Motions for admission will be heard ~~the first Thursday of each month which is not a legal holiday as defined by RCFC 6(a).~~ Where the first Thursday of the month falls on a legal holiday, admissions will be held on the second Thursday of the month. monthly on the dates posted on the court's website, generally Thursday of the first full week in each month. Applicants for admission must appear in the clerk's office no later than 9:30 a.m. to pay the admission fee and fill out the necessary papers. Motions will be heard promptly at 10:00 a.m., ~~in Courtroom No. 4, Room 501, at the National Courts Building, 717 Madison Place, NW, Washington, DC 20005, in a courtroom posted in the lobby on the day scheduled for hearing the motions.~~ Applicants who for special reasons are unable to appear for admission ~~on the first Thursday of the month~~ one of the posted dates should contact the clerk's office to make appropriate arrangements.

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended August 2, 2005, May 15, 2006.)

## **Rules Committee Notes**

\* \* \* \* \*

### **2006 Amendment**

Subdivision 83.1(b)(2)(A) (Admission to Practice Upon Oral Motion) has been amended to provide some flexibility respecting when motions for admission to practice will be heard upon oral motion.

**Rule 86. Effective Date**

These rules as revised became effective on May 1, 2002. Those revisions and subsequent amendments to these rules are applicable to all proceedings pending at the time of adoption. ~~They govern all proceedings in actions brought after that date and also all further proceedings in actions then pending,~~ except to the extent that in the opinion of the court their application in a particular action pending when the revisions or amendments ~~rules~~ take effect would not be feasible or would work injustice, in which event the former procedure applies.

(As revised and reissued May 1, 2002; as amended May 15, 2006.)

**Rules Committee Notes**

\* \* \* \* \*

**2006 Amendment**

The second sentence of RCFC 86 has been rewritten to clarify the rule's essential purpose: that amendments to the court's rules apply to all pending proceedings unless the application of such amendments would not be feasible or would work injustice.

**APPENDIX B**  
**VACCINE RULES OF THE UNITED STATES COURT**  
**OF FEDERAL CLAIMS**

\* \* \* \* \*

**Rule 9. Suspension of Proceedings**

\* \* \* \* \*

**(b) Effect.** Such periods of suspension shall be excluded for purposes of the time limitations of 42 U.S.C. § 300aa-12(d)(3) and Vaccine Rules 4(c) ~~4(b)~~ and 10.

(As revised and reissued May 1, 2002; as amended May 15, 2006. See Rules Committee Notes, infra.)

\* \* \* \* \*

**Rule 11. Judgment**

**(a) In the Absence of a Motion for Review.**

In the absence of the filing of a motion for review pursuant to Vaccine Rule 23 within 30 days after the filing of the special master's decision pursuant to Vaccine Rule ~~Rules~~ 10 or order of dismissal pursuant to Vaccine Rule 21(b), ~~21(b)~~, or 21(c); or if prior to the expiration of such period each party files a notice stating that it will not seek such review, the clerk shall forthwith enter judgment in accordance with the special master's decision or order.

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended May 15, 2006. See Rules Committee Notes, infra.)

**Rule 12. Election**

**(a) General.** When no motion for review of a decision pursuant to Vaccine Rule 10 or order of dismissal pursuant to Vaccine Rule 21(b) is filed by either party pursuant to Vaccine Rule 23, petitioner shall, within 90 days after the entry of judgment, file with the clerk an election in writing either (1) to accept the judgment or (2) to file a civil action for damages for the alleged injury or death. Upon failure to file an election within the time prescribed, petitioner shall be deemed to have filed an election to accept the judgment.

\* \* \* \* \*

(As revised and reissued May 1, 2002; as amended May 15, 2006. See Rules Committee Notes, infra.)

\* \* \* \* \*

**Rule 21. Dismissal of Petitions**

**(a) Voluntary Dismissal; Effect Thereof.** A petition may be dismissed without order of the special master or the court (1) by petitioner's filing of a notice of dismissal at any time before service of respondent's report, or (2) by the filing of a stipulation of dismissal signed by all parties who have appeared in the proceeding. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal may, in the discretion of the special master or the court, be deemed to operate as an adjudication upon the merits when filed by a petitioner who has previously dismissed the same claim. A petition ~~that is~~ dismissed under this subsection ~~(1) or (2) above~~ will not result in ~~receive~~ a judgment pursuant to Vaccine Rule 11 for purposes of 42 U.S.C. § 300aa-21(a). For the court's administrative purposes, the special master will instead issue an order concluding proceedings.

~~**(b) Failure to Prosecute or Participate.** If the petitioner fails to prosecute, the petition may be dismissed pursuant to Vaccine Rule 21(c). A petitioner whose petition is dismissed under this subsection will receive a judgment pursuant to Vaccine Rule 11 for purposes of 42 U.S.C. § 300aa-21(a). No judgment shall be entered against respondent despite any failure of participation unless petitioner introduces evidence establishing a right to compensation.~~

**(b) (c) Involuntary Dismissal; Effect Thereof.** For failure of the petitioner to prosecute or comply with the Vaccine Rules or any order, the special master or the court may dismiss a petition or any claim therein. A ~~petitioner whose~~ petition is dismissed under this subsection will result in ~~receive~~ a judgment pursuant to Vaccine Rule 11

for purposes of 42 U.S.C. § 300aa-21(a).

(As revised and reissued May 1, 2002; as amended August 2, 2005, May 15, 2006. See Rules Committee Notes, infra.)

#### **Rules Committee Notes**

\* \* \* \* \*

#### **2006 Amendment**

**Rule 21.** Subdivision (b) (“Failure to Prosecute or Participate”) has been stricken as redundant. The substance of that subdivision is set forth in the text of former subdivision (c) (“Involuntary Dismissal; Effect Thereof”), now renumbered as subdivision (b). The renumbering of subdivision (c) is also reflected in corresponding changes to the text of Vaccine Rules 11(a) and 12(a).

## APPENDIX OF FORMS

### FORM 1 ADMISSION INSTRUCTIONS

The accompanying form shall be used in applying for admission to the bar of this court pursuant to RCFC 83.1. This form should be duly executed and returned to the clerk of the court along with the following items:

- (1) a current (**not more than three months old**) *original* certificate from the Clerk of the Supreme Court of the United States, or the clerk of the highest court of your state, territory, possession, or the District of Columbia, or the United States Court of Appeals for the Federal Circuit, attesting to your admission to the bar of that court and your good standing therein (**Note: a letter from the bar of your state is NOT acceptable**);
- (2) two letters or signed statements from attorneys stating the following:
  - a. they are members of the bar of this court, or the bar of the Supreme Court of the United States;
  - b. they are not related to you;
  - c. you are personally known to them;
  - d. you possess all of the qualifications required for admission here;
  - e. they have examined your application; and
  - f. they affirm that your personal and professional character and standing are good;
- (3) a check, made payable to “Clerk, United States Court of Federal Claims,” in the amount of \$250.00 ~~\$150.00~~ to cover the required fee.

Applications (including letters and fee) must ~~are to~~ be complete when submitted; ***incomplete applications will be returned.***

Admission under this procedure does not require your appearance in person. A certificate will be forwarded to you upon the granting ~~approval~~ of your application.

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Clerk of Court  
717 Madison Place ~~Pt.~~, NW  
Washington, DC 20005-1011  
(202) 357-6400

**FORM 2  
COVER SHEET**

**In The United States Court of Federal Claims**

**Cover Sheet**

Plaintiff(s) or Petitioner(s)

---

If this is a multi-plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

Name of the attorney of record (See RCFC 83.1(c)): \_\_\_\_\_

Firm Name: \_\_\_\_\_

Post Office Box: \_\_\_\_\_

Street Address: \_\_\_\_\_

City-State-Zip: \_\_\_\_\_

Telephone & Facsimile Numbers: \_\_\_\_\_

Is the attorney of record admitted to the Court of Federal Claims Bar? ☐ Yes ☐ No

Does the attorney of record have a Court of Federal Claims ECF account? ☐ Yes ☐ No

If not admitted to the court or enrolled in the court's ECF system, please call (202) 357-6614 for admission papers and/or enrollment instructions.

~~If **NO**, please call (202) 357-6406 for admission papers and instructions.~~

Nature of Suit Code: ☐ ☐ ☐

Select only one (three digit) nature-of-suit code from the attached sheet and if numbers 118, 134, 226, 312, 356, or 528 are used, please explain.

Agency Identification Code: ☐ ☐ ☐

See attached sheet for three-digit codes.

Amount Claimed: \$ \_\_\_\_\_

Use estimate if specific amount is not pleaded.

**Disclosure Statement:**

Is a RCFC 7.1 Disclosure Statement required? ☐ Yes ☐ No

If yes, please note that two copies are necessary.

**Bid Protest:**

Indicate approximate dollar amount of procurement at issue: \$ \_\_\_\_\_

Is plaintiff a small business? ☐ Yes ☐ No

**Vaccine Case:**

Date of Vaccination: \_\_\_\_\_

**Related Cases:**

Is ~~if~~ this case is directly related to any pending or previous case? ☐ Yes ☐ No

If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.



### Nature-of-Suit Codes for General Jurisdiction Cases

100 Contract - Construction - (CDA)	208 Tax - Gift	350 Military Pay - Relocation Expenses
102 Contract - Fail to Award - (CDA)	210 Tax - Income, Corporate	352 Military Pay - Retirement
104 Contract - Lease - (CDA)	212 Tax - Income, Individual	354 Military Pay - SBP
106 Contract - Maintenance - (CDA)	214 Tax - Informer's Fees	356 Military Pay - Other
108 Contract - Renovation - (CDA)	216 Tax - Preparer's Penalty	
110 Contract - Repair - (CDA)	218 Tax - Railroad	500 Common Carrier - transportation
112 Contract - Sale - (CDA)	Retirement/Unemployment Tax Act	502 Copyright
114 Contract - Service - (CDA)	220 Tax - TEFRA Partnership - 28:1508	504 Native American
116 Contract - Supply - (CDA)	222 Tax - Windfall Profit	506 Oil Spill Clean Up
118 Contract - Other - (CDA)	Overpayment - Interest	508 Patent
	224 Tax - 100% Penalty - 26:6672 -	510 Taking - Personalty
120 Contract - Bailment	Withholding	511 Taking - FIRREA
122 Contract - Bid Preparation Costs	226 Tax - Other	512 Taking - Realty
124 Contract - Medicare Act		514 Taking - Other
126 Contract - Realty Sale	300 Civilian Pay - Back Pay	516 Miscellaneous - Damages
128 Contract - Subsidy	302 Civilian Pay - COLA	518 Miscellaneous - Lease
130 Contract - Surety	303 Civilian Pay - Disability Annuity	520 Miscellaneous - Mineral Leasing Act
132 Contract - Timber Sale	304 Civilian Pay - FLSA	522 Miscellaneous - Oyster Growers
134 Contract - Other	306 Civilian Pay - Overtime Compensation	Damages
	308 Civilian Pay - Relocation Expenses	524 Miscellaneous - Safety Off. Ben. Act
136 Contract - Other - Wunderlich	310 Civilian Pay - Suggestion Award	526 Miscellaneous - Royalty/Penalty Gas
	312 Civilian Pay - Other	Production
138 Contract - Injunctions (Pre Award)	340 Military Pay - Back Pay	528 Miscellaneous - Other
140 Contract - Injunction (Post Award)	342 Military Pay - CHAMPUS	529 TRIS
	344 Military Pay - Correct records	532 CLA Review - Japanese Internment
200 Tax - Allowance of Interest	346 Military Pay - Correct/Reinstate	534 Indian Claims Commission
202 Tax - Declaratory Judgment - 28:1507	348 Military Pay - Reinstatement	535 Informer's Reward
204 Tax - Estate		536 Spent Nuclear Fuel
206 Tax - Excise		

### Nature-of-Suit Codes for Vaccine Cases

456 Injury - DPT & Polio	484 Injury - Hepatitis B	477 Death - Pertussis
457 Injury - D/T	485 Injury - Hemophilus Influenzae	478 Death - Polio - inactive
458 Injury - DTP/DPT	486 Injury - Varicella	479 Death - Polio - other
459 Injury - Measles	490 Injury - Rotavirus	480 Death - Rubella
460 Injury - M/M/R	492 Injury - Thimerosal	481 Death - Tetanus & Diphtheria
461 Injury - Measles/Rubella	<u>494 Injury - Trivalent Influenzae</u>	482 Death - Tetanus & Tox.
462 Injury - Mumps		483 Death - Other
463 Injury - Pertussis	470 Death - DPT & Polio	487 Death - Hepatitis B
464 Injury - Polio - inactive	471 Death - D/T	488 Death - Hemophilus Influenzae
465 Injury - Polio - other	472 Death - DTP/DPT	489 Death - Varicella
466 Injury - Rubella	473 Death - Measles	491 Death - Rotavirus
467 Injury - Tetanus & Diphtheria	474 Death - M/M/R	493 Death - Thimerosal
468 Injury - Tetanus & Tox.	475 Death - Measles/Rubella	<u>495 Death - Trivalent Influenzae</u>
469 Injury - Other	476 Death - Mumps	

## **AGENCY CODES**

<b>AGR</b>	Agriculture	<b>TRN</b>	Department of Transportation
<b>AF</b>	Air Force	<b>TRE</b>	Department of Treasury
<b>ARM</b>	Army	<b>VA</b>	Department of Veterans Affairs
<b>AEC</b>	Atomic Energy Commission	<b>VAR</b>	Various Agencies
<b>COM</b>	Department of Commerce	<b>O</b>	Other
<b>DOD</b>	Department of Defense		
<b>DOE</b>	Department of Energy		
<b>ED</b>	Department of Education		
<b>EPA</b>	Environmental Protection Agency		
<b>GPO</b>	Government Printing Office		
<b>GSA</b>	General Services Administration		
<b><u>HLS</u></b>	<u>Homeland Security</u>		
<b>HHS</b>	Health and Human Services		
<b>HUD</b>	Housing and Urban Development		
<b>DOI</b>	Department of the Interior		
<b>ICC</b>	Interstate Commerce Commission		
<b>DOJ</b>	Department of Justice		
<b>LAB</b>	Department of Labor		
<b>MC</b>	Marine Corps		
<b>NAS</b>	National Aeronautical Space Agency		
<b>NAV</b>	Navy		
<b>NRC</b>	Nuclear Regulatory Commission		
<b>PS</b>	Postal Service		
<b>STA</b>	State Department		
<b>SBA</b>	Small Business Administration		

**FORM 5**  
**EAJA ADMINISTRATIVE AGENCY CODES**

(Use the following abbreviations for the U.S. Government Agency involved in claim (Item 5))

BENEFITS REVIEW BOARD .....	(BRB)
CIVIL AERONAUTICS BOARD .....	(CAB)
CIVIL SERVICE COMMISSION (U.S.) .....	(CSC)
CONSUMER PRODUCTS SAFETY COMMISSION .....	(CPSC)
COPYRIGHT ROYALTY TRIBUNAL .....	(CRT)
DEPARTMENT OF AGRICULTURE .....	(AGRI)
DEPARTMENT OF COMMERCE .....	(COMM)
DEPARTMENT OF DEFENSE .....	(DOD)
DEPARTMENT OF EDUCATION .....	(EDUC)
DEPARTMENT OF ENERGY .....	(DOE)
DEPARTMENT OF HEALTH, EDUCATION & WELFARE .....	(HEW)
DEPARTMENT OF HEALTH & HUMAN SERVICES .....	(HHS)
<u>DEPARTMENT OF HOMELAND SECURITY</u> .....	(HLS)
DEPARTMENT OF HOUSING & URBAN DEVELOPMENT .....	(HUD)
DEPARTMENT OF INTERIOR .....	(DOI)
DEPARTMENT OF JUSTICE .....	(DOJ)
DEPARTMENT OF LABOR (Except OSHA) .....	(LABR)
DEPARTMENT OF TRANSPORTATION SAFETY BOARD .....	(TRAN)
DEPARTMENT OF THE TREASURY (Except IRS) .....	(TREA)
DRUG ENFORCEMENT AGENCY .....	(DEA)
ENVIRONMENTAL PROTECTION AGENCY .....	(EPA)
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION .....	(EEOC)
FEDERAL AVIATION AGENCY .....	(FAA)
FEDERAL COAL MINE SAFETY BOARD .....	(FCMS)
FEDERAL COMMUNICATIONS COMMISSION .....	(FCC)
FEDERAL DEPOSIT INSURANCE CORPORATION .....	(FDIC)
FEDERAL ELECTION COMMISSION .....	(FEC)
FEDERAL ENERGY AGENCY .....	(FEA)
FEDERAL ENERGY REGULATORY COMMISSION .....	(FERC)
FEDERAL HOME LOAN BANK BOARD .....	(FHLB)
FEDERAL LABOR RELATIONS AUTHORITY .....	(FLRA)
FEDERAL MARITIME BOARD .....	(FMBD)
FEDERAL MARITIME COMMISSION .....	(FMC)
FEDERAL MINE SAFETY & HEALTH ADMINISTRATION .....	(MSHA)
FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION .....	(MSHR)
FEDERAL RESERVE SYSTEM .....	(FRS)
FEDERAL TRADE COMMISSION .....	(FTC)
FOOD & DRUG ADMINISTRATION .....	(FDA)
GENERAL SERVICES ADMINISTRATION .....	(GSA)
IMMIGRATION & NATURALIZATION SERVICE .....	(INS)
INTERNAL REVENUE SERVICE (Except TAX COURT) .....	(IRS)
INTERSTATE COMMERCE COMMISSION .....	(ICC)
MERIT SYSTEMS PROTECTION BOARD .....	(MSPB)
NATIONAL LABOR RELATIONS BOARD .....	(NLRB)
NUCLEAR REGULATORY COMMISSION .....	(NRC)
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION .....	(OSHA)
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION .....	(OSHC)
OFFICE OF MANAGEMENT & BUDGET .....	(OMB)
OFFICE OF PERSONNEL MANAGEMENT .....	(OPM)
OFFICE OF WORKERS COMPENSATION PROGRAM .....	(OWCP)
PATENT OFFICE .....	(PATO)
POSTAL RATE COMMISSION (U.S.) .....	(PRC)
POSTAL SERVICE (U.S.) .....	(USPS)
RR RETIREMENT BOARD .....	(RRRB)
SECURITIES & EXCHANGE COMMISSION .....	(SEC)
SMALL BUSINESS ADMINISTRATION .....	(SBA)
TAX COURT, INTERNAL REVENUE SERVICE .....	(TXC)

**FORM 10**  
**APPLICATION FOR ACCESS TO INFORMATION UNDER**  
**PROTECTIVE ORDER BY EXPERT CONSULTANT OR WITNESS**

**United States Court of Federal Claims**

	)	
	)	
Plaintiff,	)	No. _____
	)	
v.	)	Judge _____
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	
	)	

APPLICATION FOR ACCESS TO INFORMATION UNDER  
PROTECTIVE ORDER BY EXPERT CONSULTANT OR WITNESS

1. I, the undersigned, am a \_\_\_\_\_ with \_\_\_\_\_ and hereby apply for access to protected information covered by the Protective Order issued in connection with this proceeding.

2. I have been retained by \_\_\_\_\_ and will, under the direction and control of \_\_\_\_\_, assist in the representation of \_\_\_\_\_ in this proceeding.

3. I hereby certify that I am not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for or on behalf of any party to this proceeding or any other firm that might gain a competitive advantage from access to the information disclosed under the protective order. Neither I nor my employer provides advice or participates in any decisions of such parties in matters involving similar or corresponding information about a competitor. This means, for example, that neither I nor my employer provides advice concerning, or participates in decisions about, marketing or advertising strategies, product research and development, product design or competitive structuring and composition of bids, offers, or proposals with respect to which the use of protected information could provide a competitive advance.

4. My professional relationship with the party for whom I am retained in this proceeding and its personnel is strictly as a consultant on issues relevant to the proceeding. Neither I nor any member of my immediate family holds office or a management position in any company that is a party in this proceeding or in any competitor or potential competitor of a party.

5. I have attached the following information:

- a. a current resume describing my education and employment experience to date;
- b. a list of all clients for whom I have performed work within the two years prior to the date of this application and a brief description of the work performed;
- c. ~~a statement of the services I am expected to perform in connection with this proceeding; a description of the financial interests that I, or any member of my immediate family, has in any interested party in this proceeding or any party whose protected information will be reviewed; if none, I have so stated;~~

- ~~c.d.~~ a statement of the services I am expected to perform in connection with this proceeding;
- ~~d.e.~~ a description of the financial interests that I, my spouse, and/or my family has in any entity that is an interested party in this proceeding or whose protected information will be reviewed; if none, I have so stated;
- ~~e.f.~~ a list identifying by name of forum, case number, date, and circumstances all instances in which I have been granted admission or been denied admission to a protective order, had a protective order admission revoked, or have been found to have violated a protective order issued by an administrative or judicial tribunal; if none, I have so stated; and
- ~~f.g.~~ a list of the professional associations to which I belong, including my identification numbers.

6. I have read a copy of the Protective Order issued by the court in this proceeding. I will comply in all respects with all terms and conditions of that order in handling any protected information produced in connection with the proceeding. I will not disclose any protected information to any individual who has not been admitted under the Protective Order by the court.

7. For a period of two years after the date this application is granted, I will not engage or assist in the preparation of a proposal to be submitted to any agency of the United States government for \_\_\_\_\_ when I know or have reason to know that any party to this proceeding, or any successor entity, will be a competitor, subcontractor, or teaming member.

8. For a period of two years after the date this application is granted, I will not engage or assist in the preparation of a proposal or submission to \_\_\_\_\_ nor will I have any personal involvement in any such activity.

9. I acknowledge that a violation of the terms of the Protective Order may result in the imposition of such sanctions as may be deemed appropriate by the court and in possible civil and criminal liability.

\* \* \*

By my signature, I certify that, to the best of my knowledge, the representations set forth above (including attached statements) are true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Executed

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Signature of Attorney of Record

\_\_\_\_\_  
Date Executed

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number